

**REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed May 4, 2007. In the Office Action claims 1, 2, 11, 17, 24, 25, 49, 50-54, and 56-58 have been preliminarily rejected as allegedly being anticipated under 35 USC §102(b). In addition, claims 3, 4, 12, 22, 32, 33, 37, 39-41, 43-48, 55 have been preliminarily rejected as being allegedly unpatentable under 35 USC §103(a). Claims 1-4, 11, 12, 16, 17, 22, 24, 25, 39-41, and 43-58 remain pending for consideration and allowance is respectfully requested.

**Claim 16**

The Applicants have noticed that dependent claim 16 has not been rejected. In response, the Applicants respectfully request allowance of dependent claim 16.

**RESPONSE TO CLAIM REJECTION BASED ON ANTICIPATION**

In the Office Action, claims 1, 2, 11, 17, 24, 25, 49, 50-54, and 56-58 have been preliminarily rejected as allegedly being anticipated under 35 USC §102(b). For a proper rejection of a claim under 35 U.S.C. §102(b), the cited reference must disclose all elements/features/steps of the claim. See, e.g., E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co., 849 F.2d 1430, 7 USPQ2d 1129 (Fed. Cir. 1988).

**Claim 1**

Independent claim 1 reads:

1. A system for providing an e-learning course, comprising:

- a) a database for storing a plurality of reusable learning objects and a profile of at least one student that defines a plurality of course requirements of the student; and
- b) a dynamic rendering engine adapted and configured to create an individualized course for the student by assembling a subset of the learning objects in response to an assessment item designed to evaluate whether the student has mastered a learning objective, wherein *the learning objects are unassembled immediately prior to delivery.*

*(Emphasis Added)*

In response to the present Office Action, the Applicants respectfully submit that Whitehurst at least does not disclose the above-emphasized portion of independent claim

1. Specifically, Whitehurst at least does not disclose that the learning objects are unassembled immediately prior to delivery. As a result, allowance of claim 1 is respectfully requested.

**Claims 2-4, 11, 12, 16, 49, 54, and 55**

If independent claim 1 is allowable over the prior art of record, then its dependent claims 2-4, 11, 12, 16, 49, 54, and 55 are allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

**Claim 17**

Independent claim 17 reads:

17. An e-learning tool comprising:

- a) an authoring tool operable to create a plurality of learning objects, wherein at least one of the learning objects includes an assessment item for determining the learning objects containing learning objectives familiar to a student;
- b) ***a dynamic delivery tool operable to dynamically assemble and deliver a course page of instruction*** embodying at least one learning object, wherein the course page is dynamically assembled by the e-learning tool in response to determining a characteristic of the student by evaluating the assessment item; and
- c) a learning management system containing a student profile.

***(Emphasis Added)***

In response to the present Office Action, the Applicants respectfully submit that Whitehurst at least does not disclose the above-emphasized portion of independent claim 17. Specifically, Whitehurst at least does not disclose a dynamic delivery tool operable to dynamically assemble and deliver a course page. As a result, allowance of claim 17 is respectfully requested.

**Claims 22, 24, 25, 50, and 53**

If independent claim 17 is allowable over the prior art of record, then its dependent claims 22, 24, 25, 50, and 53 are allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

**Claim 51**

Independent claim 51 reads:

51. An article of manufacture, which comprises a computer readable medium having stored thereon instructions for carrying out a method for delivering e-learning content, the method comprising: determining which of a plurality of learning objects will

be delivered to a user based on an assessment item designed to evaluate whether the student has mastered a learning objective *by a first code segment*.

*(Emphasis Added)*

In response to the present Office Action, the Applicants respectfully submit that Whitehurst at least does not disclose the above-emphasized portion of independent claim 51. Specifically, Whitehurst at least does not disclose an assessment item designed to evaluate whether the student has mastered a learning objective by a first code segment. As a result, allowance of claim 51 is respectfully requested.

#### **Claim 52**

If independent claim 51 is allowable over the prior art of record, then its dependent claim 52 is allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

#### **Claim 56**

Independent claim 56 reads:

56. A method of conducting an e-learning session comprising:
- a) receiving a student input;
  - b) in response to the student input, *dynamically assembling a set of at least one selected discrete object from a set of multiple selected discrete objects*; and
  - c) transmitting the set of at least one selected discrete object.

*(Emphasis Added)*

In response to the present Office Action, the Applicants respectfully submit that Whitehurst at least does not disclose the above-emphasized portion of independent claim 56. Specifically, Whitehurst at least does not disclose dynamically assembling a set of at least one selected discrete object from a set of multiple selected discrete objects. As a result, allowance of claim 56 is respectfully requested.

**Claim 57**

Independent claim 57 reads:

57. A method of conducting an e-learning session comprising:

- a) sending at least one question to a subject to be tested;
- b) receiving a response to the at least one question;
- c) ***assembling a page based upon the response***; and
- d) ***sending the page*** to the subject.

***(Emphasis Added)***

In response to the present Office Action, the Applicants respectfully submit that Whitehurst at least does not disclose the above-emphasized portion of independent claim 57. Specifically, Whitehurst at least does not disclose assembling a page based upon the response and sending the page. As a result, allowance of claim 57 is respectfully requested.

**Claim 58**

Independent claim 58 reads:

58. A method of continuing an e-learning session after having received a response to a question, the question relating to a first portion of the e-learning session, the method comprising:

- a) ***adaptively assembling*** a second portion of the e-learning session based upon the response; and
- b) transmitting the second portion of the e-learning session.

***(Emphasis Added)***

In response to the present Office Action, the Applicants respectfully submit that Whitehurst at least does not disclose the above-emphasized portion of independent claim 58. Specifically, Whitehurst at least does not disclose adaptively assembling. As a result, allowance of claim 58 is respectfully requested.

**RESPONSE TO CLAIM REJECTIONS BASED ON OBVIOUSNESS**

In the Office Action, claims 3, 4, 12, 22, 32, 33, 37, 39-41, 43-48, 55 have been preliminarily rejected as being allegedly unpatentable under 35 USC §103(a). It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest, either implicitly or explicitly, all elements/features/steps of the claim at issue. See, e.g., *In re Dow Chemical*, 5 U.S.P.Q. 2d 1529, 1531 (Fed. Cir. 1988), and *In re Keller*, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981).

**Claim 32**

Independent claim 32 reads:

32. A system for formulating and distributing an e-learning course, comprising:
- a) ***a first software application that receives e-learning content and categorizes the content into classes of discrete elements, each discrete element representing a separate characteristic of the e-learning course and its presentation, the classes of discrete elements having pre-defined behaviors and relationships therebetween;***
  - b) a second software application that receives information regarding a student's requirements for the course; and
  - c) a third software application that correlates the received information with the classes of discrete elements so as to automatically and dynamically assemble and

render the discrete elements as an e-learning course customized to the individual requirements of the student.

***(Emphasis Added)***

In response to the present Office Action, the Applicants respectfully submit that Cook in view of DeNicola at least does not disclose, teach, or suggest the element of a first software application receiving e-learning content and categorizing the content into classes of discrete elements. In addition, Cook in view of DeNicola also does not disclose, teach, or suggest each of the discrete elements representing a separate characteristic of the e-learning course and its presentation, where the classes of discrete elements have pre-defined behaviors and relationships therebetween. As a result, allowance of claim 32 is respectfully requested.

**Claim 33**

If independent claim 32 is allowable over the prior art of record, then its dependent claim 33 is allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

**Claim 37**

Independent claim 37 reads:

37. A method for dynamically *delivering a page of e-learning course content* to a user, comprising:

- a) storing a plurality of *discrete learning objects* within a database; and
- b) assembling and *delivering the page* including at least one of the learning objects in response to an input from the user in approximately real-time to the user, based upon an assessment item designed to evaluate whether the student has mastered a learning objective.

***(Emphasis Added)***

In response to the present Office Action, the Applicants respectfully submit that Whitehurst in view of DeNicola at least does not disclose, teach, or suggest discrete learning objects or delivering a page including at least one of the learning objects. As a result, allowance of claim 37 is respectfully requested.

**Claims 39, 40, and 41**

If independent claim 37 is allowable over the prior art of record, then its dependent claims 39, 40, and 41 are allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

**Claim 43**

Independent claim 43 reads:

43. An article of manufacture, which comprises a computer readable medium having stored thereon instructions for carrying out a method for creating and delivering an e-learning course, the method comprising:
- a) accumulating course content by a first code segment;
  - b) *defining the course content in terms of discrete, reusable learning objects by a second code segment;*
  - c) *determining a subset of the learning objects for assembly into the course immediately prior to distribution to a user based on an assessment item designed to*



evaluate whether the student has mastered a learning objective by a third code segment; and

d) dynamically delivering the subset of learning objects to the user by a fourth code segment.

***(Emphasis Added)***

In response to the present Office Action, the Applicants respectfully submit that Cook in view of DeNicola at least does not disclose, teach, or suggest the element of defining course content in terms of discrete, reusable learning objects. In addition, Cook in view of DeNicola does not disclose, teach, or suggest determining a subset of the learning objects for assembly into the course immediately prior to distribution to a user. As a result, allowance of claim 43 is respectfully requested.

**Claims 44, 45, and 46**

If independent claim 43 is allowable over the prior art of record, then its dependent claims 44, 45, and 46 are allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

**Claim 47**

Independent claim 47 reads:

47. An e-learning development and distribution tool for providing course content, comprising:

a) means for accumulating and storing a plurality of discrete software entities, wherein each entity embodies one aspect of presenting, accessing or explaining the course content; and

b) means for assembling and delivering at least one of the discrete entities to at least one student in response to an input from the student in approximately real-time, such that the student receives an individualized version of the course content, *wherein the software entities are unassembled immediately prior to delivery.*

(Emphasis Added)

In response to the present Office Action, the Applicants respectfully submit that Cook in view of DeNicola at least does not disclose, teach, or suggest the element of the software entities being unassembled immediately prior to delivery. As a result, allowance of claim 47 is respectfully requested.

#### **Claim 48**

If independent claim 47 is allowable over the prior art of record, then its dependent claim 48 is allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing, these dependent claims recite further features and/or combinations of features (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

**CONCLUSION**

In light of the foregoing and for at least the reasons set forth above, the Applicant respectfully requests favorable reconsideration and allowance of the present application and the presently pending claims. If in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (603) 627-8134.

Respectfully submitted,

**SHEEHAN, PHINNEY, BASS + GREEN, P.A.**

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a series of loops and a final flourish.

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